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By ECF

Hon. Judge James Donato
United States District Court
450 Golden Gate Avenue
Courtroom 11, 19th Floor
San Francisco, CA 94102-3489

In re Capacitors Antitrust Litigation, Nos. 17-MD-2801, 14-CV-3264 (N.D. Cal.)

Dear Judge Donato:

Unfortunately, we must write further in response to Mr. Saveri's letter regarding Mr. Kakizaki's availability for a deposition next Tuesday in light of the Court's subsequent order. Mr. Kakizaki's "doctor's appointment," as stated in Mr. Saveri's letter, is an appointment with his heart doctor before taking a lengthy flight from Japan to the United States. We therefore must request the Court's assistance scheduling the deposition. Further details of the scheduling issues are set forth below.

Following the January 2 status conference at which the Court indicated that oral argument on the Fifth Amendment motions would take place on January 23, we alerted

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Hon. Judge James Donato

2

Mr. Kakizaki that he might have to make himself available for a deposition in the United States shortly thereafter. On January 15, the Court issued an Order granting the motion without oral argument. In the Order, the Court stated that Mr. Kakizaki “should be made available for deposition by the DPPs at a time and location in the United States at the DPPs’ convenience (*reasonably so, of course*).” (Order at 2 (emphasis added).)

On the morning of January 16, Direct Purchaser Plaintiffs (“DPPs”) insisted that that we make Mr. Kakizaki (who resides in Japan) available for deposition in San Francisco on just six days’ notice—on January 22 (the day *before* oral argument was originally scheduled on the motion). On January 17, immediately after consulting overnight with local counsel in Japan who was able to speak with Mr. Kakizaki, we reported back to DPPs this morning that Mr. Kakizaki was not available on January 22 on account of certain unmovable obligations in Japan, including a medical appointment. In doing so, we offered to make Mr. Kakizaki available for deposition any day the following week. DPPs requested additional information about the medical condition but, without waiting for a response, sent their letter to the Court requesting an Order that Mr. Kakizaki appear for deposition on January 22. Following the Court’s Order, we nonetheless shared this additional information with DPPs and requested that they reconsider once again. They have not responded after we sent correspondence following the entry of the Court’s order.

Mr. Kakizaki is in his 60s, and he has a heart condition.¹ This condition requires periodic appointments with his doctor, one of which is scheduled for next week. It is more than just a doctor’s appointment, as set out in Mr. Saveri’s letter. In addition to this appointment with his doctor on January 24, Mr. Kakizaki previously organized a family gathering for his elderly mother next week in northern Japan. She is 89 and is in ill health.²

For these reasons, we offered to make Mr. Kakizaki available for deposition on January 27, 28, 29, or 30—only days after DPPs’ requested date of January 22.

Given Mr. Kakizaki’s pressing obligations—and the fact that Mr. Kakizaki had not anticipated needing to make himself available until after the January 23 hearing—we do not think that a request to postpone the deposition from Wednesday until Monday is unreasonable. Other than referring generally to the convenience of counsel, we have no insight into whether or why class counsel cannot accommodate the alternative dates we have offered. We respectfully request that the Court enter an Order that the deposition go forward on January 27, 28, 29, or 30, or another agreed upon time with counsel for DPPs.

¹ If the Court would find it helpful, we would be happy to provide additional details concerning Mr. Kakizaki’s condition to the Court rather than to do so on the public record.

² Again, should the Court require additional information regarding her condition, we would be happy to provide it.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Hon. Judge James Donato

3

Again, it is unfortunate that we are requesting the Court's further intervention in this scheduling matter, but the parties remain at an impasse. We are available to discuss any of these issues at the Court's convenience, should the Court require any additional information.

Sincerely,

/s/ Joseph J. Bial

Joseph J. Bial

cc: All Counsel (by ECF)